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09/733,190	12/08/2000	Eric S. Michlowitz	M-9865 US	3158
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HAMILTON & TERRILE, LLP P.O. BOX 203518 AUSTIN, TX 78720			STERRETT, JONATHAN G	
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			3623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/733,190

Applicant(s)

MICHLOWITZ ET AL.

Examiner

Jonathan G. Sterrett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12/08/2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Detailed Action***

***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 17, 18, 19 and 20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result.

3. In the present case, Claims 17, 18, 19 and 20 only recite an abstract idea. The recited steps of merely evaluating the performance of a supplier, determining an indicia of quality, cost of a component, and an indicia of availability of components do not

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apply, involve, use or advance the technological arts since all of the recited steps can be performed in the mind of the user or manually.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete and tangible result. In the present case, Claims 17, 18, 19 and 20 do produce a "useful, concrete and tangible result" by providing determination of a best supplier in a class of suppliers, indicia of quality and availability, and component cost.

While they do produce a useful, concrete and tangible result, but do not however, apply, involve, use or advance the technological arts as explained above, Claims 17, 18, 19 and 20 are deemed to be directed to non-statutory subject matter.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 7, 9, 10, 11, 14, 21 and 22 rejected under 35 U.S.C. 102(b) as being anticipated by Armstrong et al. U.S. Patent 5,627,973.

Regarding Claim 1, Armstrong et al. teaches a method for evaluating performance (Figure 3(23) comprehensive operational analysis is an evaluation of performance of a supplier-customer relationship) comprising: receiving evaluations electronically (Fig 2, via computer) of performance (Column 1 Lines 64-65, input answer

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data is evaluative of business performance) based on a plurality of inputs (Column 1 Lines 55-58, a series of questions and answers evaluative of business performance) and generating an indicia (Column 1 Lines 65-67, calculating a weighted score comprised of separate categories of business performance) based on a plurality of inputs. Note the terms "supplier", "team leader", "team member" and "customer" are not granted any patentable weight and are considered to be non-functional descriptive material in the claim.

Regarding Claim 2, Armstrong et al. teaches generating and providing a report representing an indicia or score (Column 1 Line 67 – Column 2 Line 2, the printed sheet constitutes a report) and providing an analysis thereof (Column 5 Line 66, a narrative analysis is reflective and interpretive of the scores).

Regarding Claim 7, Armstrong et al. teaches analyzing the performance based on improvements required (Column 3, Line 67 – Column 4 Line 1, the graphs printed out constitute an analysis of performance). It is inherent in the teaching of Armstrong et al. that the analysis provided would identify required improvements, because the objective of the method is to evaluate performance.

Regarding Claim 9, Armstrong et al. discloses a computer system (Column 4 Line 5-8, a laptop comprises the portable first computer in Armstrong et al.'s system), the computer system including a computer program product encoded in computer readable media (Column 4, Lines 18-20, the second computer "means" inherently contains a program to process the scores and perform calculations), the computer program operable to receive evaluations (Column 1 Lines 55-58, inputting a series of

questions into a computer inherently indicates the computer is operable to receive evaluations) and generate an indicia of performance based on the input evaluations (Column 1 Lines 65-68, the score is reflective of an indicia of performance). Note the terms "supplier", "customer", "team member" and "team leader" are not granted any patentable weight and are considered to be non-functional descriptive material in the Claim.

Regarding Claim 10 and 11, Armstrong et al. discloses the use of either a PC (Column 4 Line 13, explicitly mentions a PC, also see Figure 2) or Laptop Computer (Column 4 Line 6, explicitly a laptop computer) as the computer system; the use of a modem to communicate between the two computers (Figure 4, Column 5 Line 16, explicitly a modem between the two computers). It is inherent that both laptops and PC's are configured to communicate over either a local network through an Ethernet connection or over a public global communication network (i.e. Internet) through a modem device. Furthermore it is inherent in the art that sending and receiving emails with attachments (including evaluations) is done through email services provided by Internet Service Providers (ISP's).

Regarding Claim 14, Armstrong et al. discloses a computer program product encoded in computer readable media comprising instructions, executable on a computer system (Column 4 Lines 6-8, computer receives answers, thus it is inherent that it contains and runs a computer program product), configured to: receive a number of evaluations (Column 1 Lines 58-60, answers to questions evaluative of performance) electronically (Column 5 Line 14-15, computers transmit the answer data electronically),

and generate an indicia of performance based upon any number of evaluations (Column 1 Lines 58-60, multiple answers inputted, Column 1 Lines 65-68, answers weighted to calculate a score, Column 2 Line 3, weighted scores are used as evaluation). Note the terms "supplier", "customer", "team leader", "team member", "vendor" are not granted any patentable weight and are considered to be non-functional descriptive material in the Claim.

Regarding Claim 21, Armstrong et al. discloses a method for evaluating performance consisting of receiving electronic evaluations (Fig 2, computerization of Armstrong et al.'s invention inherently makes his method electronic, Column 1 Lines 58-60, answered questions constitute evaluations of performance) of performance based on a plurality of users' inputs (Column 1 Lines 57-60, more than one question from more than one person can be input) and generating an indicia or score (Column 1 Lines 65-67, answers are weighted to calculate an overall score or indicia) based on a plurality of users' inputs and generating and providing a report representing of that indicia or score (Column 1 Line 67 – Column 2 Line 2, scores printed out constitute a report) and providing an analysis thereof (Column 5 Line 66, narrative provided as an analysis of scores). Note the terms "supplier", "customer", "team leader", "team member", "vendor" are not granted any patentable weight and are considered to be non-functional descriptive material in the Claim.

Regarding Claim 22, Armstrong et al. discloses a method for communicating an indicia of the performance (Column 4 Line 23-28, the two different scores provided are both indicia of performance).

6. Claims 12, 13, 15, 16, 17, 18, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by PRTM. (Supply Chain Council's webpage newsletter of November 1998 describing PRTM's online supply-chain benchmarking, pages 4-5, hereafter referred to as Reference A. PRTM's webarchive.org webpage of December 5, 1998; page 3 that details PRTM's supply chain benchmarking approach, hereafter referred to as Reference B. Supply Chain Council Presentation of May 12, 1999 by Scott Stephens detailing the Supply Chain Operations Reference Model. Note footnote on page 8 that PRTM organized the Supply Chain Council. This Reference hereafter known as Reference C.)

Regarding Claim 12, PRTM discloses a method for evaluating performance comprising: receiving evaluations submitted electronically (Reference A, Paragraph A, Lines 2-3, participating over the internet inherently means evaluations are received electronically) and generating an indicia of performance (Reference A, Paragraph B, Line 2, key supply chain metrics are all indicia of performance) based on the submitted evaluations. PRTM discloses the online participation to their supply chain benchmarking service. It is inherent in this service that subscribers submit data to be evaluated against other participants in the benchmarking service. PRTM has no other mechanism for gaining normally proprietary benchmarking data from which to construct a database of comparison data and so requires subscribers to enter their own performance data prior to providing access to customizable online reports that compare the performance of the subscriber with those within either their own industry group or a custom population across industry groups. Note the terms "supplier", "customer", "team



member”, and “team leader” are not granted any patentable weight and are considered to be non-functional descriptive material in the Claim.

Regarding Claim 13, PRTM discloses all the limitations of Claim 12 and also generating and providing a report representing an indicia of performance (Reference A, Paragraph B, Line 3, comparative performance data are provided online in report form; Reference A, Paragraph C, Line 2, subscriber's can obtain 6-12 reports on key supply chain findings). Note the term “supplier” is not granted any patentable weight and is considered to be non-functional descriptive material in the Claim.

Regarding Claim 15, PRTM discloses a: a computer system having a data storage device where the storage device stores performance data (Reference A, Paragraph A, Lines 2-3, online benchmarking subscription service therefore participants submit data over the Internet). Since the benchmarking survey is conducting online, it is inherent that the system disclosed by PRTM incorporates a computer system with a data storage device. It is inherent that web servers, i.e. computers that host web pages on the Internet, contain a data storage device as part of their construction. It is also inherent that the data storage device disclosed by PRTM stores data for supply-chain performance. PRTM's benchmarking study illustrates the following prior art: quality (Reference C, Item 1, Delivery Performance/Quality is a SCOR Level 1 metric), cost (Reference C, Item 2, Cost is a SCOR Level 1 metric), availability (Reference C, Item 3, Fill Rates measure how orders are filled and hence measures availability of product), service performance (Reference C, Item 4, Delivery Performance to Commit Date measures level of service provided to customers once a delivery date has been

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committed) and top performers (Reference A, Paragraph B, Line 4, best practices of top performers). Note the terms "supplier", "class", "components", "vendor" are not granted any patentable weight and are considered to be non-functional descriptive material in the Claim.

Regarding Claim 16, PRTM discloses a server wherein the computer system and the server are configured to communicate over a network and receive evaluations submitted from a second computer system across the network. Since PRTM discloses an online service (Reference A Paragraph A Lines 2-3), it is inherent that participants in the service are able to submit evaluations over a network, i.e. the Internet, from a computer system to PRTM's web server and any number of other computers connecting to PRTM's web server.

Regarding Claim 17, PRTM discloses evaluating the performance of a supplier, this performance determined from at least one of a group (Reference A Paragraph B Line 3, PRTM's benchmark database contains hundreds of companies). PRTM also discloses determining a best supplier in a class of suppliers (Reference C Item 5, "Superior" Level 1 scorecard metric category represents the best in class performance for that particular metric).

Regarding Claim 18, PRTM discloses determining an indicia of quality (Reference C Item 1, Delivery Performance/Quality is a SCOR Level 1 Scorecard metric. In this case quality is primarily measured by perfect order fulfillment).

Regarding Claim 19, PRTM discloses determining a cost (Reference C Item 2, Cost is a Level 1 Scorecard metric comprising three different areas of supply chain cost directly associated with components supplied)

Regarding Claim 20, PRTM discloses determining an indicia of availability of components (Reference C, Item 3, Fill Rate measures how available components are when an order is filled)

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3-6 rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong et al. in view of PRTM (Same references as noted above.).

Regarding Claim 3, Armstrong et al. discloses all the limitations of Claim 1 except for generating and providing a report representing an indicia of the supplier's performance. PRTM teaches providing a report representing an indicia of a supplier's performance (Reference A, Paragraph B, Line 2, key metrics here are indicias of a supplier's performance provided online in report form). PRTM teaches that measuring these indicia's result in significant improvements in supply chain performance (Reference B, Paragraph D, Lines 10-11, PRTM's work includes providing benchmarking data to highlight supply chain performance opportunities to clients). Therefore it would have been obvious to one having ordinary skill in the art at the time

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of the invention to combine the limitations of Claim 1, as noted above, with generating and providing a report representing the indicia of the supplier's performance, as taught by PRTM, for the reasons discussed therein above.

Regarding Claim 4, Armstrong et al. discloses all the limitations of Claim 1 except providing access to view electronically an indicia of the performance of all suppliers of a class of components. PRTM teaches providing access via the Internet 24-7 to view electronically the indicia of performance of all suppliers in a class. (Reference A, Paragraph C, Line 1 & Reference A, Paragraph B, Line 3; comparative performance data includes indicia of performance of all suppliers in a class) The indicia's here are designed to measure comparative, or across various suppliers, performance. PRTM teaches that measuring these indicia's result in significant improvements in supply chain performance (Reference B, Paragraph D, Lines 10-11, PRTM's work includes providing benchmarking data to highlight supply chain performance opportunities to clients). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the limitations of Claim 1, as noted above, with providing access to view electronically the indicia of performance of all supplier's in a class, as taught by PRTM, for the reasons discussed therein above.

Regarding Claim 5, Armstrong et al. discloses all the limitations of Claim 1 except communicating an indicia of the performance of the supplier. PRTM teaches providing confidential access via the Internet 24-7 to view performance electronically. (Reference A, Paragraph C, Line 1 & Reference A, Paragraph B, Line 2). The indicias here are designed to measure comparative, or across various suppliers, performance. PRTM

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teaches that measuring these indicia result in significant improvements in supply chain performance (Reference B, Paragraph D, Lines 10-11, PRTM's work includes providing benchmarking data to highlight supply chain performance opportunities to clients).

Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the limitations of Claim 1, as noted above, with communicating an indicia of the performance of the supplier, as taught by PRTM, for the reasons discussed therein above. Note the use of the terminology 'members of a manufacturing organization' in the claim is not granted any patentable weight as it is considered to be non-functional descriptive material.

Regarding Claim 6, Armstrong et al. discloses all the limitations of Claim 1 except analyzing the performance of a supplier based on the performance of the best supplier in a class of suppliers. PRTM teaches analyzing the performance of a supplier based on the performance of the best supplier in a class of suppliers. (Reference C Item 5, Superior category in Level 1 Performance Scorecard constitutes best in class performance for that particular metric or indicia, see also Reference A, Paragraph B, Line 3). The indicia here are designed to measure comparative, or across various suppliers, as well as best in class performance. PRTM teaches that measuring these indicia result in significant improvements in supply chain performance (Reference B, Paragraph D, Lines 10-11, PRTM's work includes providing benchmarking data to highlight supply chain performance opportunities to clients). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the limitations of Claim 1, as noted above, with analyzing the performance of a

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supplier based on the performance of the best supplier in a class of suppliers, as taught by PRTM, for the reasons discussed therein above.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong et al. in view of Barnard et al. U.S. Patent 6,687,677.

Regarding Claim 8, Armstrong et al. discloses all the limitations of Claim 1 except agreeing to performance targets. Barnard et al. teaches agreeing to future performance targets (Column 21 Line 15-17, Service Level Agreements is a formal supplier-customer agreement regarding future performance targets) as an essential step in managing ongoing procurement relationships. The agreements formalize the level of performance the supplier agrees to in the future so that team integration is greatly facilitated (Column 22 Line 28-31, Barnard et al. teaches that the methods of his invention result in greatly facilitated team integration in implementing a procurement system). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the limitations of Claim 1, as noted above, with agreeing to future performance targets, as taught by Barnard et al., for the reasons discussed therein above.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Culhane U.S. Patent 6,513,018 teaches a method for scoring the likelihood of a desired performance result. Bellini et al. U.S. Patent 5,974,395 discloses a method for enterprise supply chain planning. Notani U.S. Patent 6,332,155 teaches cross-enterprise collaborative decision-making. Gruenwald U.S. Patent 6,424,969 teaches a system and method for organizing data. Bhaskaran et al. U.S. Patent

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6,157,915 discloses a digital communication method and routing function. Cambon et al. U.S. Patent 6,675,129 discloses an Internet based supplier process reliability system.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is 703-305-0550. The examiner can normally be reached from 8am-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 703-305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jes  
OCT, 2004  
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